



Texas Department of Insurance

Division of Workers' Comp

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

VISTA MEDICAL CENTER HOSPITAL
4301 VISTA ROAD
PASADENA TEXAS 77504

Respondent Name

ZURICH AMERICAN INSURANCE CO

Carrier's Austin Representative Box

Box Number 19

MFDR Tracking Number

M4-06-6001

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Carrier may reimburse at a "per diem" rate for the hospital services if the total audited charges for the entire admission are below \$40,000, after the Carrier audits the bill pursuant to the applicable rules. However, if the total audited charges for the entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in § 134.401(c)(6)(A)(iii). This rule does not require Vista to provide evidence that the services provided during the admission were unusually extensive or unusually costly to trigger the application of the Stop Loss Methodology. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached."

Amount in Dispute: \$166,679.69

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated June 1, 2006: "The Requestor asserts it is entitled to reimbursement in the amount of \$170,033.25 which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement..."

Respondent's Position Summary Dated September 09, 2011: "Respondent submits the Respondent's Post-Appeal Supplemental Response as a response to and an incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Tex. Admin. Code § 134.401 (repealed)..."

Both Responses Submitted by: Flahive, Ogden & Latson, 505 West 12th Street, Austin, Texas 78701

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
October 6, 2005, through October 9, 2005	Inpatient Hospital Services	\$166,679.69	\$23,600.50

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes
2. 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997 sets out the reimbursement guidelines
3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated December 14, 2005

- W10 "No maximum allowable defined by fee guideline. Reimbursement based on insurance carrier fair and reasonable reimbursement methodology."
- 480 "Reimbursement based on the acute care inpatient hospital fee guideline per diem rate allowances."
- 97 "Payment is included in the allowance for another service/procedure."
- 16 "Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remark codes whenever appropriate."
- 253 "In order to review this charge we will need a copy of the invoice."
- 226 "Included in global charge."

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

Division rule at 28 Texas Administrative Code §133.307(g)(3)(C)(iv), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including a statement of the disputed issue(s) that shall include "how the submitted documentation supports the requestor position for each disputed fee issue." This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 TexReg 6264. The Austin's Third Court of Appeals November 13, 2008 opinion in *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr., LLP*, 275 S.W.3d 538, 550 (Tex. App. - Austin 2008, *pet. denied*) addressed a challenge to the validity and interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." On August 10th of 2011, both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The Division received supplemental information from the respondent on September 9th of 2011. The respondent provided a copy of the supplemental information to the requestor at the time that it was submitted to the Division's MFDR section as per 28 Texas Administrative Code §133.307. No additional documentation was received from the requestor. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment.

28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) delineates those factors which establish

eligibility for payment under the Stop-loss exception. One of the factors is §134.401(c)(6)(A)(i) which states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, under (A)(v) of that same section "...Audited charges are those which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier on November 18, 2005 finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v), therefore the audited charges equal \$226,711.58. The Division concludes that the total audited charges exceed \$40,000.

28 Texas Administrative Code §134.401(c)(6) goes on to address other factors by stating "...Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered..." Additionally, §134.401(c)(6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The requestor, in the documentation that was originally filed states, in pertinent part "...if the total audited charges for the entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in §134.401(c)(6)(A)(iii). This rule does not require a hospital to prove that services provided during the admission were unusually extensive or unusually costly. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached." On the contrary, the Division cites the Austin Third Court of Appeals November 13, 2008 opinion in *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr., LLP*, 275 S.W.3d 538, 550 (Tex. App. - Austin 2008, pet. denied) in which the court concluded "We reverse the Trial court's judgment that the Stop-Loss Exception applies to any admission in which audited charges exceed \$40,000, and we render judgment that, to establish eligibility for reimbursement under the Stop-Loss methodology, a provider must demonstrate that audited charges exceed \$40,000 and that the services provided were unusually costly and unusually extensive so as to allow application of the exception..." Therefore, whether an admission is unusually costly and unusually extensive may not be presumed, but rather must be demonstrated by the requestor. The requestor offers no explanation, or discussion on how the services provided may be considered unusually costly. Similarly, the requestor offers no explanation, or discussion on how the services provided may be considered unusually extensive. The Division concludes that the requestor failed to demonstrate that the stop-loss method of payment applies to the services in dispute.

For the reason stated above, the services in dispute, in this case are not eligible for the stop-loss method of reimbursement. Consequently, 28 TAC §134.401(c)(1) applies. Review of the submitted documentation finds that the services provided were surgical, therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 TAC §134.401(c)(3)(ii) states, in pertinent part, that "(ii) The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." Review of the discharge summary finds that the injured worker was admitted on October 6, 2005 and discharged on October 9, 2005. The length of stay is therefore 3 days. The surgical per diem rate of \$1,118 multiplied by the length of stay of 3 days results in an allowable amount of \$3,354.00. Review of the submitted documentation finds that the respondent issued payment in the amount of \$3,354.00 for the surgical days, no additional amount is recommended.

In accordance with 28 Texas Administrative Code §134.401(c)(4), certain items billed as part of an inpatient hospital stay shall be reimbursed in addition to the per diem rate discussed above. 28 Texas Administrative Code §134.401(c)(4)(A) allows for additional reimbursement for implantables billed under revenue code 278 at cost to the hospital plus 10%. Review of the medical bill finds that the provider billed for 17 items under revenue code 278. The requestor on its table of disputed services indicated an amount in dispute of \$66,562.50 for the items billed under revenue code 278. Review of the submitted documentation finds that the carrier reduced/denied payment for these items with explanation codes 16 and 253, which directed the requestor to provide invoices for review of these charges. Upon reconsideration, the requestor provided invoices for the items billed under revenue code 278. The Division concludes that payment can be recommended for the disputed services related to revenue code 278 at cost + 10%. Upon review of the cost invoices, the Division finds that the total allowable for the 17 units billed under revenue code 278 was \$21,455.00 (cost) plus \$2,145.50 (10%), for a grand total of \$23,600.50. This amount is recommended for payment as no documentation was found to support that the respondent paid the amount due for these items.

Conclusion

The requestor in this case demonstrated that the audited charges exceed \$40,000, failed to demonstrate that the disputed inpatient hospital admission involved unusually costly services, and failed to demonstrate that the admission involved unusually extensive services. The requestor failed to support that the Stop-Loss reimbursement methodology applies; therefore the per diem reimbursement method applies. The total allowable for the admission is \$26,954.50. An amount of \$3,354.00 was paid by the respondent, an additional amount of \$23,600.50 is recommended for payment.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$23,600.50 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Manager

Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party*.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.